IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 133 of 2001

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the Judgment ?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the Judgment ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

VINODRAY PRAGJIBHAI REVESHIA

Versus

STATE OF GUJARAT

Appearance:

MR YATIN SONI for the Petitioner

AD OZA, Government Pleader, for Respondent No. 1

CORAM : MR.JUSTICE S.K.KESHOTE

Date of Decision: 22/05/2001

C.A.V. JUDGMENT

By this petition under Article 226 of the Constitution of India, the petitioner is praying for direction to the respondent to appoint either Advocate Shri Mohanbhai Sayani or Advocate Shri Kamalbhai Sonpal

as Special Public Prosecutor to conduct Sessions Case No.34 of 2000 pending trial in the Court of the Additional Sessions Judge, Rajkot District at Gondal.

2 The facts of the case are that the petitioner is residing in Morbi town of Rajkot District. He lodged a comlaint bearing No.CR No.319 of 1999 on 16.9.1999 in Morbi Town Police Station against three unknown accused persons and other accused persons who might be found during the course of the investigation for the offence punishable under Section 302 read with Section 120-B of the IPC. After registration of the complaint as aforesaid, the investigation was undertaken by the police and during the course of investigation many other facts came to the knowledge of the police and some other persons were found to have been involved in this incident. As per the knowledge of the petitioner, eight persons were arrested and have been chargesheeted by the investigation officer including a sitting MLA of Morbi -Maliya Constituency of the ruling party, Bharatiya Janata Party. Another person was a candidate of BJP who had contested for Gujarat Legislative Assembly from Chotila Constituency but was not elected.

3 The chargesheet has already been submitted in the case and the learned Judicial Magistrate concerned has committed the same to the Sessions Court for trial. The present case is pending trial in Court of Additional Sessions Judge, Rajkot District at Gondal, as stated earlier.

4 It is the case of the petitioner that the accused persons being wealthy and influential persons and having criminal background, independent witnesses are not coming forward to give evidence against them. Deceased Prakash Raveshia was Chairman of Morbi Nagarik Sahakari Bank Limited and also ex-President of Morbi Municipality and he was murdered in broad day-light. He is also stated to be an active member of B.J.P. The deceased is the nephew of the petitioner. The deceased was only son of his father. He is survived by wife and three minor sons. The petitioner in para 3.7 of the petition states that accused - Kantilal Shivlal Amrutia is sitting MLA elected on the ticket of Bharatiya Janata Party and he is also holding the office of Chairman of Gujarat Handloom and Handicrafts Development Corporation Limited. It is stated that as per his information against Kantilal Shivlal Amratiya two or three other offences were registered also earlier.

4 It is further the case of the petitioner that

another accused namely Koli Gangaram Tapu is a history-sheeter criminal. As per the knowledge and information of the petitioner, earlier he had committed another murder and he was acquitted. It is stated that several other cases are also alleged to have been pending against him. About other accused persons it is stated that they belong to Koli community and they are very headstrong persons. The petitioner apprehends that the accused persons are being very wealthy and politically influential persons and they are making all attempts and are trying to tamper with the prosecution witnesses.

5 It is stated that Shri Anil Desai, District Government Pleader and the Public Proseuctor of Rajkot District was looking after this sessions case. The petitioner and other family members of the deceased had full trust in the Public Prosecutor. The petitioner apprehends that the accused persons must have approached Shri Anil Desai and Shri Desai has withdrawn himself in this matter on 15.1.2001, a day before the date of hearing of the Sessions Case. On 16.1.2001 the petitioner made a request to the Additional Sessions Judge to adjourn the matter. Accordingly the matter was adjourned to 1.2.2001 and again to 2.3.2001. The petitioner in para 3.15 of the petition stated that as per his knowledge the accused persons have compelled the Public Prosecutor Shri Anil Desai for withdrawing himself from the case and accordingly he had withdrawn himself from the case. The petitioner apprehending that he will not get justice, has requested the Hon'ble Chief Justice of India by letter dated 11.1.2001. The said letter was also forwarded to the Hon'ble Chief Justice of this Court. In the said letter it is mentioned that there is a movement to replace the public prosecutor of the case when the case is about to start in the Court. This apprehension of the petitioner turned out to be true and Shri Anil Desai has withdrawn himself from the case. On 19.1.2001 the petitioner has requested Hon'ble Law Minister to appoint a special public prosecutor in this case. The petitioner has suggested names of the two advocates as aforesaid. The petitioner on number of times thereafter requested the Hon'ble Law Minister and the Law Secretary to consider his application dated 19.1.2001. It is the say of the petitioner that they are avoiding and are not replying to the petitioner's letter.

6 On 26.2.2001 the petitioner has requested the Secretary, Law Department, that he wanted to see Law Minister and to him for the aforesaid purpose. On 26.2.2001 the petitioner waited from 12 noon to 4 PM outside the chamber of Law Minister and Law Secretary but

neither of them had permitted the petitioner to see them for discussing the aforesaid matter. The Personal Assistant of Law Secretary had informed the petitioner to see Shri G.D. Bhagodara who is looking after the said application. It is the case of the petitioner that ultimately Shri Bhagodara informed the petitioner that the Government has decided not to support the petitioner.

7 In the backdrop of these facts, the petitioner has filed this petition.

8 Reply to the petition is filed by the respondent-State.

9 The learned counsel for the petitioner submits that the action of the Law Minister and Law Secretary not to consider the application of the petitioner for appointment of Special Public Prosecutor in this case is illegal, unjust, arbitrary and violative of Article 14 of the Constitution of India. In his submission, the complainant has all the right to write to the State Government for appointment of Special Public Prosecutor in a given set of facts. In this case, some of the accused in Sessions Case are very influential and wealthy persons. They are having political background and all the accused persons have engaged a very senior advocate to defend their cases. Looking to these facts, it is expected of the State Government to appoint a Special Public Prosecutor. It is urged that Shri Anil Desai, the District Public Prosecutor was assigned this matter to conduct the same at Gondal despite the fact that two other Public Prosecutors were available at Gondal but, he has withdrawn himself from this case under the pressure of the accused persons. Relying on the decision of his Court in the case of Amrutbhai B Patel v/s State of Gujarat reported in 2000(3) GLR 2667, the learned counsel for the petitioner submitted that the Government has all the powers to appoint Special Public Prosecutor in a given case on the request of the complainant in a criminal case.

10 Shri A.D. Oza, learned Public Prosecutor, contended that regular public prosecutor is available and he will conduct the case and as such the request of the petitioner for appointment of special public prosecutor deserves no acceptance. It has next been contended that the petitioner has not made any complaint of partiality or favouritism or competence against the public prosecutor to whom this sessions trial has been entrusted. Relying on two decisions of the Apex Court in the case of Rajendrakumar Natvarlal Shah v/s State of

Gujarat reported in (1988) 3 SCC 153 and in the case of Shiv Kumar v. Hukam Chand and Another reported in (1999) 7 SCC 467 Shri Oza submitted that it is not absolute and indefeasible right of the complainant to pray for the appointment of special public prosecutor.

11 In rejoinder, the learned counsel for the petitioner making reference to Criminal Misc. Application No.1868 of 2000 submitted that special public prosecutors are being appointed by the State Government. In that case though there are more than 35 Additional Public Prosecutors are available in the Court, and they are competent, Shri A.D. Shah has been appointed as a Special Public Prosecutor.

12 Shri A.D. Oza, learned Public Prosecutor, does not dispute that in the Sessions Case which is a subject matter of Criminal Misc. Application No.1868 of 2000 Shri A.D. Shah has been appointed as a Special Public Prosecutor. He further submits that as Mr A.D.Shah has been appointed as Special Public Prosecutor in the sessions case out of which Misc. Criminal Application No.1868 of 2000 has arisen and by virtue of his this appointment he is appearing in this matter also.

13. I have given my thoughtful consideration to the rival contentions made by the learned counsel for the parties.

14. It is not in dispute that though two regular Public Prosecutors were available at Gondal but in this Sessions Case Shri Anil Desai, Public Prosecutor was handed over the trial thereof. Learned counsel for the respondents does not dispute that Shri Anil Desai, Public Prosecutor was stationed at Rajkot. All the Sessions cases which are sent to the Additional Sessions Court at Gondal, trial thereof are conducted by two regular Public Prosecutors, who are appointed and stationed there. In these facts, it is clear that the Sessions case was given to the Public Prosecutor other than who are appointed and stationed at Gondal. Though it is a disputed question of fact whether Anil Desai on his own and voluntarily withdrew himself from the Sessions Case as per the case of the respondents, or he has been made to withdraw by asserting political pressure by political persons as it is the case of the petitioner and on the basis of the material which has come on the record and the fact that Mr. Anil Desai is not a party to this petition or otherwise present in this Court, no decision can be given thereon. However, prima-facie, there may be some

substance in the grievance made by the petitioner that Shri Desai would have been made to withdraw himself from the Sessions case by the accused persons asserting political pressure. It is not in dispute that one of the accused in the Sessions Case is a sitting M.L.A. belonging to the ruling party and another is also equally a member of the ruling party in the State. It is not the case, rule or law in the state where the State Government is not appointing Special Prosecutors in a given case. Contrary, I find from this case as well as from the Criminal Misc. Application No.1868/2000 that the State Government is appointed Special Prosecutor in the Sessions Case. In the Criminal Misc. Application No.1868/2000, arising from Sessions trial for the offence under section 302 of IPC pending in the Court of Sessions at Surat, Shri A.D. Shah, a criminal lawyer of this court has been appointed as a Special Prosecutor. There also, it is not disputed by the learned counsel for the respondents, the matter relates to murder of an advocate and a member of the ruling party. The Special Counsel and that too of the calibre of A.D.Shah in the facts of this case as aforestated, there may be all the possibility that a ruling party may adhere to the request made for appointment of a Special Prosecutor in a given case. I had an occasion to deal with that case as the matter had been heard by me and order was kept reserved but as one of the parties impleaded later in point of time and was not served with the notice, the judgment was not given. So I know the facts of that case. In that case, the accused prayed for transfer of the Sessions Case from Surat to another District on the ground that none of the advocate practising at Surat are accepting the brief. Reference is made to that matter only for the purpose to show that the State Government is appointing Special Prosecutors in a given case. In this case, the respondents filed reply to the special criminal application; and therefrom also, I find that as per the provisions of section 24 (8) of Cr.P.C. the State Government has power to appoint Special Public Prosecutors. That section reads as under:

> 24 (8) : The Central Government or the State Government may a appoint for the purpose of any case or class of cases, a person who has been in practice as an Advocate for not less than 10 years as a Special Public Prosecutor.

15. From this provision as well as the facts of this case and the fact as emerge from Criminal Misc. Application No.1868/2000 there remains no doubt whatsoever in the mind of the Court that the State

Government has power to appoint Special Public Prosecutors. Here, in this case also, the Public Prosecutor other than regular Public Prosecutor was entrusted with the trial of the Sessions Case and that Public Prosecutor now has declined to conduct this trial for the reasons with which we are not concerned. It is to be stated at the cost of repetition that irrespective of the grounds raised by both the parties re. withdrawal of Anil R. Desai as Public Prosecutor in the Sessions Case, in reply to the special criminal application, I find that Mr. Anil R. Desai was appointed as a Special Public Prosecutor in the sessions trial. When Mr. Anil R. Desai was appointed as a Special Public Prosecutor in this case though two other Additional Public Prosecutors namely Mr. B.R. Jadeja and R.H. Oza were available and despite of the fact that these two persons were senior and competent, Mr. Desai was appointed, as Special Prosecutor, I fail to see any justification in the approach of the respondents now to insist that the trial has to be conducted by these two Public Prosecutors at Gondal. Those are senior and competent also then what for Mr. Anil Desai has been appointed as a Special Public Prosecutor. The respondents have not produced the copy of the order which has been made on the application of the petitioner. Looking to the facts of this case, namely, (i) one of the accused involved in the Sessions Case is a sitting M.L.A. of the ruling party and Chairman of Gujarat Handloom and Handicrafts Development Corporation Ltd., another accused is an active member of the ruling party (ii) despite of availability of two regular Additional Public Prosecutors at Sessions Court, Gondal who are stated to be senior and competent, Shri Anil Desai has been appointed as a Special Public Prosecutor and Shri Desai has withdrawn himself from the Sessions Case for the reasons as stated in the reply, I consider it to be a fit case where the prayer made by the petitioner deserves acceptance. In the matter of trial of Sessions case, re. murder of the petitioner's uncle, if the petitioner has an apprehension that the trial may not be fair, impartial and unbias, it is better that the request made by the petitioner for appointment of Special Prosecutor either of the named advocates would have been accepted. Otherwise also, the reasons given for declining the prayer made by the petitioner in the facts of this case are wholly perverse. It is true that the complainant may not have indefeasible right to get appointed a Special Prosecutor in a criminal case. But law is almost settled that in an appropriate case State Government has all power to appoint Special Prosecutor. In this case, Special Prosecutor was appointed by the Government. It is different matter that at later stage

he has withdrawn himself. In these facts, it is just, reasonable and in consonance with the principles of fair play that the State Government should have accepted the prayer of the petitioner and either one of the two named advocates should have been appointed as a Special Prosecutor.

16. In the result, this petition succeeds and the same is allowed and the respondent -State is directed to appoint either Advocate Shri Mohanbhai Sayani or Advocate Shri Kamalbhai Sonpal as Special Prosecutor to conduct the trial of the Sessions Case NO.34/2000 pending in the Court of Additional Sessions Judge at Rajkot District at Gondal. Rule is made absolute accordingly. The respondent-State is directed to pay Rs.2000/- as costs of this petition to the petitioner.

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mohd/zgs